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Supreme Court of the United States

Nos. 820, 821, 822. October Term, 1940.

GERRITSEN BASIN DEVELOPMENT CORPORATION,

Petitioner,

against

THE CITY OF NEW YORK.

BRIEF IN OPPOSITION TO PETITIONS FOR CERTIORARI

March 13, 1941.

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In each of a group of three condemnation proceedings wherein were involved inquiries into a series of old Dutch and English colonial grants to lands on Long Island, N. Y., dating from 1636, the petitioner has applied for certiorari, the assigned grounds being (1) that an arbitration award of the year 1696 has been construed in such a way as to lead to the disallowance of a fantastic claim erected by the petitioner upon its own construction of it, so that a violation of the contracts clause of the Constitution occurred; and (2) that when in two successive appeals to the appellate courts of New York involving two different groups of damage parcels taken in the same series of condemnation proceedings, the Court of Appeals, while consistently deciding against the present petitioner on both appeals, shifted its ground from a determination that the claimant failed to prove title to the damage parcels forming the subject-matter of the litigation, to a determination that the condemnor (the City of New York [respondent here]) had (as it had power under local law to do) affirmatively shown

title in itself, there was such an alteration of a rule of property as to offend against the principles enunciated in *Muhlker* v. *N. Y. & Harlem R. Co.*, 197 U. S. 544 (1905).

(1)

The decision sought to be reviewed (284 N. Y., mem. p. 109), and the prior decision (275 N. Y. 456) in the same series of condemnation proceedings involving different though adjacent parcels of land, are the only cases in the Court of Appeals of the State of New York construing the document known as the 1696 arbitration. Neither decision amounted to a holding that the arbitration award was invalid. Neither construed it in such a manner as to impair its obligation. When argument was had at the bar of the Court of Appeals, no contention was ever made that the 1696 arbitration was a nullity. The City took one view of its meaning, scope and effect, the petitioner took another. To reject petitioner's view and accept (tacitly) ours, is not to raise or decide a federal question under the contracts clause.

The leading case in this Court is *Lehigh Water Company* v. *Easton*, 121 U. S. 388 (1887), where this Court said (p. 392):

> "The argument in behalf of the company seems to rest upon the general idea that this court, under the statutes defining its appellate jurisdiction, may reexamine the judgment of the state court in every case involving the enforcement of contracts. But this view is unsound. The state court may erroneously determine questions arising under a contract which constitutes the basis of the suit before it; it may hold a contract void which, in our opinion, is valid; it may adjudge a contract to be valid which, in our opinion, is void; or its interpretation of the contract

may, in our opinion, be radically wrong; but, in neither of such cases, would the judgment be reviewable by this court under the clause of the Constitution protecting the obligation of contracts against impairment by state legislation, and under the existing statutes defining and regulating its jurisdiction, unless that judgment, in terms or by its necessary operation, gives effect to some provision of the state constitution, or some legislative enactment of the state, which is claimed by the unsuccessful party to impair the obligation of the particular contract in question."

(2)

The instruments of title upon which the petitioner relied on both trials and on both appeals to the Court of Appeals (275 N. Y. 456; 284 N. Y., mem. p. 109) were substantially the same. The question on both trials and both appeals was: What did the Dutch grant of 1636, and the arbitration awards construing it, actually mean? To answer the question properly required counsel to furnish an accurate translation of the Dutch originals and to establish what were the long-vanished landmarks referred to as determinative of the boundaries of the grant.

On both trials the City claimed that title was in itself as successor to the town of Flatlands. On the first appeal the Appellate Division held (1) that the claimant had not established its title and so could obtain no award in condemnation; and (2) that the City had likewise failed to prove its title.

On the second trial, the City, in opposing the claimants' contentions, made renewed efforts to show title in itself. Its case was prepared with greater diligence than on the first trial, and by using the testimony of one Van Laer, a distinguished expert in Dutch titles, the City convinced all three Courts below that title was in itself.

We submit that when a negative decision which awarded nothing to the petitioner and made no finding as to who had title, is followed by a positive decision that title is in a named party (the City), the petitioner is no worse off than it was before; and hence is unable to show that a judicially established rule of property has been altered to its damage.

Certainly when a point of ancient history has been left open,* nothing in the federal Constitution should be construed to block the quest for truth, or to impose forever on titles to land a perpetuation of doubt and uncertainty. All the challenged decision did was to supplant a Scotch verdict with one in favor of the people of the City of New York.

Moreover, when proper weight is given to the circumstance, expatiated upon by the Trial Justice (Rec., Vol. 5, pp. 2396, 2404, 2406, 2445, 2446), that the present petitioner based its claim on nothing more substantial than a series of quitclaim deeds from persons who themselves, and whose ancestors and grantors before them, had over a period of 300 years never dreamed of putting upon the early Dutch and colonial grants the fantastic construction now urged by petitioner, the assertion that a rule of property has been altered to their disadvantage is revealed not only as obviously false but also as deserving to be regarded with the extreme scepticism reserved for those who seek to speculate in real estate at public expense.

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* In the first *Gerritsen* case, the Court of Appeals said (275 N. Y. 456, at p. 457): "Order affirmed, with costs, because of the failure of the claimants to clearly establish their title to the land in question. We do not pass upon the southerly boundary of the Hudde and Gerritsen grant. No opinion."

CONCLUSION.

The petitions for certiorari should be denied.

March 13, 1941.

Respectfully submitted,

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